



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CTO/165927

PRELIMINARY RECITALS

Pursuant to a petition filed May 11, 2015, under Wis. Stat. § 227.42, to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on June 24, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Department erred in its issuance of a SS state supplement overpayment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Melissa Sherry (in writing)

Division of Health Care Access and Accountability

Madison, WI

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner was ineligible for federal SSI from October 2013 to July 2014.
3. During that time, the state paid \$3,386.46 in state SS supplement and caretaker supplement payments to petitioner.

4. On May 14, 2015, the Department issued a notice of the overpayments and informed petitioner that it would recoup 10% per month from current payments.
5. Petitioner appealed.

DISCUSSION

Wisconsin law requires the Department of Health Services to recover any overpayments of assistance, regardless of fault. Overpayments are collected from state SSI or caretaker supplement payments at a rate of 10% of the total overpayment each month. Wis. Adm. Code § DHS 79.40. "Incorrectly paid benefits" means that the recipient was not eligible for the benefits during the period they were paid. Wis. Adm. Code § DHS 79.30(2). The petitioner was eligible for state SSI benefits only if petitioner met the requirements of the federal program found in 42 USC 1381 through 1383d. Wis. Stat. § 49.77(2). This means that petitioner must have properly received federal SSI to receive state SSI. See Wis. Stat. § 49.77(2)(a)2; See also 20 C.F.R. §416.2025(b)(4).

The Department asserts that petitioner has been determined by the federal Social Security Administration to have been ineligible for SSI during the period from October 2013 through July 2014. The Department has provided documentation showing this. The Department explains that if the petitioner was not eligible for SSI then she was also not eligible for the supplement or caretaker payments during the same period. The Department does note, however, that petitioner could seek a waiver from the federal SSA or seek to have an error, if any, corrected by the federal SSA which could result in a waiver or reversal by the state.

At hearing, petitioner conceded that she is not sure whether she was eligible for SSI during that period and that she may be confusing SS payments with SSI payments. Regardless, petitioner did not rebut the case put forth by the Department.

CONCLUSIONS OF LAW

The Department did not err in determining the caretaker and state supplement overpayments.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 21st day of September, 2015

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on September 21, 2015.

Division of Health Care Access and Accountability
State SSI